Supreme Court, U.S.
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No.: _____

In the Supreme Court of the United States

James Richard Huntsman, Petitioner,

v.

Zenith Annette Huntsman,
f/k/a Zenith Annette Morgan, Respondent,

and

County of Washington of the State of Minnesota,
Respondent.

On Petition for Writ of Certiorari to the Minnesota Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review

I. Did the Minnesota trial court err in finding petitioner's responsive motions untimely, thereby violating the petitioner's constitutional right of due process under the U.S. Constitution, amend. XIV; and, if so, err in rejecting petitioner's responsive motions as untimely, thereby violating the petitioner's constitutional due-process right of opportunity to be heard under the U.S. Constitution, amend. XIV?

II. Did the Minnesota trial court abuse its discretion and violate the petitioner's constitutional rights of due process and equal protection of the law under the U.S. Constitution, amend. XIV, where, under the same court rule, the court selectively rejected petitioner's responsive motions as untimely, and selectively accepted and adopted respondent's untimely motion reply documents, resulting effectively in a default judgment against petitioner?

III. Did respondent/intervenor County of Washington, acting as a state child-support enforcement agency under 42 U.S.C., Ch. 7, Subch. IV, Part D, violate (1) petitioner's constitutional right of due process under the U.S. Constitution, amends. V, XIV; (2) petitioner's constitutional right under the U.S. Constitution, amend. IV against unlawful seizure of his property of security funds; and (3) 42 U.S.C., Ch. 21, Subch. I, § 1983, where, knowingly under color of an invalid order, it seized petitioner's security funds absent an effective order or judgment authorizing the seizure?

IV. Did the Minnesota Court of Appeals violate petitioner's due-process rights under res judicata and collateral estoppel in ruling the trial court could re-award respondent's attorney fees reversed on appeal and not remanded?

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James R. Huntsman, petitioner herein and below, respectfully petitions for a writ of certiorari to review the judgment of the Minnesota Court of Appeals in *Huntsman v. Huntsman*, No. A05-2168 (Minn. App. Sept. 26, 2006) in this case. All parties of interest are in the case as captioned.

Relevant Orders, Judgments, and Opinions

Order (Minn. Court of Appeals), filed Feb.7, 2006. App. A.

Huntsman v. Huntsman, No. A05-2168, 2006 Minn. App. LEXIS 1099, 2006 WL 2729284 (Minn. App. Sept. 26, 2006), *review denied* (Minn. Dec. 20, 2006). App. B.

Order (Minn. Supreme Court), filed Dec. 20, 2006, denying review of *Huntsman v. Huntsman*, No. A05-2168. App. D.

Jurisdictional Basis

(i) Entry of judgments and orders to be reviewed

Huntsman v. Huntsman, No. A05-2168, 2006 Minn. App. LEXIS 1099, 2006 WL 2729284 (Minn. App. Sept. 26, 2006), affirming trial court judgment, entered December 22, 2005, on Amended Order, filed September 30, 2005, and affirming Stipulation and Order, filed October 24, 2005.

(ii) Date of any order respecting rehearing

Order (Minn. Court of Appeals), filed Feb.7, 2006.

(iii) Statutory Provisions Conferring Jurisdiction

The judgment in *Huntsman v. Huntsman*, No. A05-2168 (Minn. App. Sept. 26, 2006) (App. B), was timely petitioned for review on October 26, 2006 to the Minnesota

Supreme Court (App. C), which denied review on December 20, 2006 (App. D). Having exhausted all state remedies, jurisdiction is conferred under 28 U.S.C. § 1257(a). *Douglas v. California*, 372 U.S. 353, 354 n.1 (1963).

Constitutional and Statutory Provisions

(i) "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, ..." U.S. Constitution, amend. IV, in relevant part.

(ii) "[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Constitution, amend. XIV, in relevant part.

(iii) "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, ..." 42 U.S.C., Ch. 21, Subch. I, § 1983, in relevant part; App. G.

Statement of the Case

This case has such an extensive and convoluted procedural history involving remand, pre-hearing, hearing, and post-hearing issues, that addressing only the most recent record would fail to provide a meaningful context in which to consider this Petition.

Petitioner petitioned for marital dissolution in April 1998,

after discovering respondent's 5-year concealment of endangerment of the parties' daughter's life. Judgment and decree of marital dissolution was entered January 14, 2000.

Minnesota family law includes two classes of persons, an obligor and an obligee. Minn. Stat. § 518.54,. subds. 7, 8; App. F5.

The trial court found support for the parties' child to be $430/month but ordered petitioner as the obligor to pay child support of $1,228.18/month plus 25% of his net profit sharing income and set maintenance at $800/month. Respondent/obligee moved for amended findings, which included her misrepresentation of petitioner's profit sharing gross income as net income and asking for increased maintenance based on that erroneously exaggerated net income. Her motion was granted in part to maintenance of $1,100/month, and petitioner appealed in November 2000. Petitioner posted an approved supersedeas bond for the disputed increased maintenance in the appeal but continued to pay originally awarded child support and maintenance.

Respondent moved the Minnesota Court of Appeals ("MCoA") to dismiss the appeal as untimely filed, which it did. Upon review of that dismissal, in October 2001, petitioner's appeal was found not untimely filed; its dismissal was reversed; and it was reinstated. *Huntsman v. Huntsman*, 633 N.W.2d 852 (Minn. 2001). In the reinstated appeal, the amended findings were reversed in part; i.e., petitioner's incorrect net income based on respondent's misrepresentation of petitioner's gross profit sharing as net income and remanded for a correct calculation of petitioner's net income. *Huntsman v. Huntsman*, No. C1-00-1923, 2002 Minn. App. LEXIS 393, 2002 WL 556142 (Minn. App. Apr. 16, 2002).

On April 29, 2002, pursuant to Minn. Stat. § 518.64, subd. 2, petitioner moved the trial court for modification of his spousal maintenance of $1,207.50/month and child support of $1,165.26/month, on the grounds that due to his em-

ployer's reduction in work force, his job providing him about $103,000/year in base salary and discretionary corporate profit sharing had been involuntarily terminated as of April 2, 2002. Petitioner exercised an option to defer receipt of his lump-sum job severance of $93,800 gross from June 2002 to two half-payments in January of 2003 and 2004, which reduced his federal and state income taxes by over $2,000. Both half-payments were sequestered as a result of respondent's motions. A consequence of the subject MCoA judgment is that petitioner did not receive even a penny of his $93,800 severance; respondent got it all.

The hearing on petitioner's modification motion was held December 20, 2002. Before the trial court heard arguments on the merits, the judge said, "You can see here the litigation. I've got the seventh file and we have another seven sitting on top of this. This is going to cost somebody a lot of money in the end." T.Hearing (12/20/2002), p.15, l.14-17.

Based on the December 20 proceeding, the trial court's April 7, 2003 order, *inter alia*, denied petitioner's modification motion and ordered still unemployed petitioner to continue to pay spousal maintenance and child support obligations as if still employed in his terminated job; also increased both obligations by a 7.6% cost-of-living increase to $1,299/month maintenance and child support of $1,254/month; and found petitioner's modification motion frivolous.

On June 12, 2003, pursuant to Minn. Stat. § 518.64, subd. 2, petitioner served and filed another motion and supporting affidavit for modification of his child support and spousal maintenance, on the grounds that (1) still unable to find comparable employment, his job severance of $93,800, even if imputed as received in June 2002, and his intercepted unemployment benefits had been exhausted; (2) respondent had been voluntarily unemployed or underemployed and had substantially increased earnings since the dissolution; and (3) respondent and the parties' daughter had decreased needs, all

making his current child support and spousal maintenance support obligations unreasonable and unfair. On September 12, 2003, petitioner submitted his supporting memorandum and supplemental affidavit, which provided documentation of his job seeking efforts, income in 2002, income in 2003 through September 2003, and a meticulously detailed, income-tax-effect financial analysis of imputing his job severance to receipt on June 1, 2002:

> "Using federal and Minnesota income tax data, Petitioner determined that he could have received about $47,471 from said $93,800, which could pay for his monthly allowed expenses and support obligations of $5,867 for about eight months. Since it was presumed Petitioner received this lump-sum payment about June 1, 2002, it would become exhausted by January 31, 2003. ... Petitioner contends a substantial change in his income occurred in February 2003, making the original terms of Petitioner's spousal maintenance and child support unreasonable and unfair, and justifying modification of the original terms of Petitioner's spousal maintenance and child support."

Petitioner's supporting memorandum, September 12, 2003, pp.4-5. Because of a pending appeal, on September 12, 2003, respondent agreed to a continuance of petitioner's June 12, 2003 modification motion hearing scheduled for September 26, 2003.

In January 2004, the trial court granted respondent's motion to sequester entirely petitioner's second half of his job-severance payment and denied petitioner's request to use part of that payment to pay the court-ordered health insurance premiums for the parties' child. Being unemployed and having his unemployment benefits intercepted, petitioner was required to liquidate assets and borrow money to pay for his basic needs and health insurance premiums for the parties' daughter to avoid default on her

coverage.

In its judgment entered Feb. 18, 2004, the court awarded respondent maintenance and child support arrears based on petitioner's failure to pay the increased obligations during his unemployment and also awarded respondent $10,463.70 for her attorney fees incurred in responding to petitioner's modification motion it found frivolous. Petitioner appealed that judgment, which was reversed in part as to (1) petitioner's correct net income and (2) respondent's award of attorney fees, and remanded to address, *inter alia*, (1) use of petitioner's $93,800 gross severance as a resource upon which to "calculate" maintenance and child support for one year from June 2002 and (2) his reemployment efforts:

> "[W]e conclude the severance pay can be used as a base to calculate spousal maintenance for at least twelve months following receipt of the severance." At *20.
>
> * * *
>
> "Although a severance package is not periodic, it is a resource available to appellant that would enable him to pay a child support obligation, at least for a while. (citation omitted). At *21.
>
> * * *
>
> Because appellant's job was terminated in April 2002, and appellant's severance payment can be used to pay his maintenance and child support obligations for the next year, *this case goes back to the district court for automatic review one year after appellant receives his final paycheck and the severance package*. At *21-*22. (emphasis added).
>
> * * *
>
> In the meantime, for the one year following his termination, appellant has *a severance package from which child support and spousal maintenance can be*

calculated. If, even with good-faith efforts, appellant has not found a job between April 2002 and April 2003, then there is a substantial change in circumstances, now rendering the previous child support order and maintenance obligation unfair." At *22. (emphasis added).

* * *

"Because the record is unclear as to the amount of the severance package that was used up for appellant's arrearages, and the amount that is held for future security, we remand to the district court for a clear determination of how the severance package was distributed. It is simply mathematics. If any of the severance package was actually attached and used to pay arrearages, then appellant does not have that money with which to pay child support and maintenance. In that instance, appellant is entitled to a downward calculation of child support. On the other hand, if the entire amount attached is simply held in trust for the periodic payment of child support and spousal maintenance, it can be used to satisfy these obligations. *Any amount escrowed for the payment of attorney fees shall be reduced by our decision on 'issue V.'*" At *23-*24. (emphasis added).

* * *

"Because of the nature of his severance package, appellant had a colorable argument regarding his motion to modify maintenance, and his motion to modify was not frivolous. Accordingly, we reverse the district court's award of attorney fees in favor of respondent." At *24.

Huntsman v. Huntsman, No. A04-286, 2004 Minn. App. LEXIS 1344, *20-*24 (Minn. App. Nov. 30, 2004). Petitioner petitioned for review to the Minnesota Supreme Court, and respondent cross-petitioned for review of the

reversal of her award of attorney fees. Both petitions were denied February 23, 2005.

On July 11, 2005, respondent served petitioner by mail a motion to address the issues remanded by *Huntsman v. Huntsman*, No. A04-286, that she scheduled to be heard August 12, 2005. On August 2, 2005, petitioner personally served upon respondent and int rvenor and personally filed with the trial court his motions responding to respondent's motion and motions raising new issues, and his supporting memorandum and affidavit, in accordance with Minn. Gen Rule Prac. 303.03-(a)(2)(i)-(iv). Petitioner moved, *inter alia*, to re-open the record to receive evidence material to the remanded issues through June 2003 that were not in the record, which closed in January 2003, in particular, a financial analysis of his severance and calculation of child support and spousal maintenance for one year from June 2002, and his reemployment efforts, which included using 22 employment resources, applying to 62 different employers and for 25 different job types, and a QRC's expert analysis and opinion about petitioner's re-employment efforts and the job market after his job termination (Petition for Review; App. C7). On personally filing his motions papers on August 2, 2005, he paid a motion fee of $55.00 by personal check, dated August 2, 2005. *Affidavit of James R. Huntsman*, Oct. 24, 2006, ¶¶3-6, Exhibit 3; App. E1 herein. Later, court administration admitted to petitioner that it had discarded from the record his filing letter dated August 2, 2005 filed with his motions documents on August 2, 2005. *Id.* at ¶9.

Petitioner's August 2 motions raising new issues were his continued motion of June 12, 2003, for which the record was already open by the continuance of the September 2003 hearing, *supra*; and another motion for modification subsequent to June 2003, based on his only sporadic temporary employment in 2004 and new employment in 2005; and respondent's and their child's decreased need for support since the original obligations were established.

Petitioner submitted respondent's discovery answers under oath that their child's needs averaged about $400/month from May 2002 through June 2004.

On August 8, 2005, respondent personally served petitioner with her memorandum and affidavit of her attorney in reply to petitioner's August 2, 2005 motions and documents, in which she claimed that petitioner's August 2, 2005 motions were untimely under Minn. Rule Civ. P. 115.01, and the trial court did not have jurisdiction to hear petitioner's motions:

"[B]ut 10 days prior to the hearing on Respondent's remand motions, Petitioner served eight additional motions .... Respondent respectfully submits that petitioner's numerous new motions are untimely served, ..." Respondent's memorandum dated August 8, 2005, p.4; *see also* p.23 re Rule 115.01.

In the evening of August 11, 2005, barely more than 12 hours before the hearing, petitioner received by express commercial delivery respondent's proposed order dated August 10, 2005.

At the August 12, 2005 motion hearing, after fully hearing respondent's motion, the trial court refused to hear any of petitioner's motions on the grounds they were untimely but did not state under which rule and facts they were untimely:

> "THE COURT: Mr. Huntsman, very, very briefly. You are late with your motions. I will hear anything you have to say in response to Ms. Huntsman's motions. I am not hearing any motions that you are bringing that are new motions – go ahead – because they are untimely." T.8-12-2005, p.41, l.3-8.

Petitioner then argued his motions were timely under the due-process required by the applicable rule:

> "MR. HUNTSMAN: As to the untimely issue raised

by respondent, under [Minn. General] Rule [of Practice] 303, I have ten days to submit a responsive motion addressing or raising new issues, and I have done that. There is a Court of Appeals opinion in January addressing this issue, Ellsworth v Bastyr. And I would like to submit that to the court." T.8-12-2005, p.41, l.9-14.

Also, petitioner objected to (1) respondent's July 11, 2005 motion on grounds of insufficiency of notice and that her motion was not a proper motion because it did not move the court for any order; (2) respondent's August 8 reply motion papers were untimely served under the same applicable court rule; and (3) respondent's August 10 Proposed Order in reply was also untimely served and filed under the same applicable court rule:

"I would also like to address three procedural issues regarding respondent's motions.

First, I would object to respondent's [motion], dated July 11th on grounds of insufficiency of notice as required by [Minn. General] Rule [of Practice] 303.01A. And also that her motion, despite its title, it does not move the court for any order. So I move to dismiss respondent's motion on grounds of insufficiency of notice, failure to have a proper motion properly before the court.

Second, I would object to the two documents that were served to me personally on August 8th, this past Monday, because they are less than five days before this hearing, in violation of [Minn. General] Rule [of Practice] 303.03, Part A3. If more time was needed, she could have moved for a continuance. I am prejudiced by the late filing because, according to Mr. Eggen's affidavit, he seeks attorney fees for service that caused taking extra time to cause the untimeliness.

So I move to strike those two documents as untimely and prejudicial. Lastly, on those, I also object to the proposed amended Finding of Fact, amended Conclusions of Law, and amended Order for Judgment that I received last evening as untimely served. It's extremely late service prejudices me by denying me due process rights to respond to it. It was not in response to any of my submissions. So it could have and should have been served with respondent's purported motion on July 11th. There is really no excuse for serving it just a day before this hearing. So I move to strike that.

With regard to the issue of motion untimeliness, there is an unpublished opinion, also by Ritter versus Ritter, that addresses Mr. Eggen's issues on the responsive motion and the timeliness involved here. That is Appellate Case Number A03-147 to about May 25, 2004."

T.8-12-2005, p.43, l.18 – p.45, l.5. Thus, petitioner again raised due-process issue over respondent's untimely service. The trial court did not grant any of petitioner's procedural motions above to dismiss or strike respondent's motions or supporting documents for untimeliness.

On September 19, 2005, Amended Findings of Fact, Amended Conclusions of Law, and Amended Order for Judgment ("September 19 Order") was filed, *inter alia*, finding and denying petitioner's responsive and new motions of August 2, 2005 as untimely, even though finding them filed ten days before the hearing:

"*On August 2, 2005, ten days before the hearing on issues on remand* and petitioner's motion on release of court-held security, *petitioner moved* to re-open the prior record (the record prior to his appeal of the February 19, 2004 judgment) and for reduction of his support and maintenance obligations for the time

period prior to the appeal and apparently for the remainder of 2004. (emphasis added).

Amended Findings of Fact, Amended Conclusions of Law, and Amended Order for Judgment, Sept. 19, 2005, Finding 9, p.3.

> "*The court is presented, ten days before the August 12, 2005 hearing*, with a report from an employment witness, Anne Lockwood, which also shows that Mr. Huntsman has worked temporary positions with the Robins, Kaplan, law firm and the Dorsey & Whitney firm in 2004." *Id.* at Finding 12, p.6. (emphasis added).

> "2. Petitioner's motions dated August 2, 2005 should in all respects be denied as untimely *served*. *Id.* at Conclusions of Law 2, p.9. (emphasis added).

Nowhere in the August 12 hearing or in its subsequent orders does the trial court state under which rule and facts petitioner's August 2 motions were untimely, nor are petitioner's motions found to have been filed nine days before the hearing.

Ms. Lockwood's opinion, referred to above by the trial court, stated in some of the relevant parts:

> "Results of labor market research suggests that few opportunities for Intellectual Property Liaison and Registered Patent Agent positions are available in the Metropolitan Twin Cities area and limited availability for this type of position existed from April 2002 through the present time period." (*Huntsman v. Huntsman*, No. A05-2168, Appellant's Brief, 23-24; Lockwood Report, p.9; *Id.*, Appellant's App. A.171)

> "Following Mr. Huntsman's involuntary termination from 3M Company, he demonstrated a good faith effort to pursue employment in his field of

> expertise.... He demonstrated aggressive job search efforts. In my opinion, Mr. Huntsman conducted a reasonable job search for the narrow job class of Intellectual Property Liaison and Registered Patent Agent." (*Id.*, p.10; Appellant's App. A.172)
>
> "Mr. Huntsman began pursuing alternate employment in April of 2002. The rise in unemployment during this time frame also posed a negative effect on Mr. Huntsman's ability to obtain employment. This increase in unemployment had a direct impact related to limited job opportunities available for employment purposes." *Id.*
>
> "Results of labor market research demonstrate limited availability for Intellectual Property Liaison and Registered Patent Agents in the Twin Cities Metropolitan area. This factor in combination with the rise in unemployment during 2002 through 2004 clearly suggests a decrease in opportunities available for Mr. Huntsman following his involuntary termination from 3M Company." *Id.*

The September 19 Order was a virtually verbatim adoption of respondent's untimely proposed order served by commercial delivery August 10, 2005, including typographical errors such as the respondent should pay the petitioner maintenance. However, the September 19 Order lacked the required order-for-judgment directive to enter judgment thereon. On September 28, 2005, petitioner petitioned the trial court for entry of judgment.

On September 30, 2005, an Amended Order ("September 30 Amended Order"), was filed, amending the September 19 Order to direct entry of judgment, and providing petitioner sixty days to pay respondent's award not covered by his funds deposited with court administration. Judgment on the

September 30 Amended Order was not entered until December 22, 2005.

On October 10, 2005, petitioner's employer notified him that it had received an order from the intervenor to withhold his income and provided him with a copy of the withholding order. The withholding order did not identify under which order or judgment it was exercising authority to seize petitioner's income property. Petitioner had not received any prior notice of intervenor County of Washington's intent to withhold his income or been given prior opportunity to contest the withholding as unauthorized. Petitioner immediately contacted the trial court judge's scheduling clerk to schedule an immediate motion hearing to contest the unauthorized income withholding. He was told the case's judge had retired as of October 1, 2005, and that a replacement judge would not likely be formally appointed until December 2005. Petitioner was given a contingent hearing date of February 3, 2006.

On October 27, 2005, petitioner received by mail a copy of Stipulation and Order, filed October 24, 2005 ("October 24 Order"), wherein the court, having been presented by respondent's and intervenor's attorneys with said order for its signature which stated that the September 19 Order was the prevailing legal authority, approved that order wherein petitioner's security funds of $84,568.32 deposited with court administration shall be paid to respondent through the Minnesota Child Support Payment Center. However, respondent's and intervenor's attorneys knowingly failed to disclose to the court that prior to October 24, 2005, the September 19 Order had been superseded by the September 30 Amended Order ordering entry of judgment, rendering the September 19 Order moot, and that no judgment had been entered on the September 30 Amended Order.

In the morning of October 28, 2005, petitioner called the former judge's scheduling clerk and asked for a hearing date

as soon as possible for a motion to challenge the October 24, 2005 order distributing his security funds of $84,568.32. He was denied a hearing any sooner than February 2006, being told his issue with the October 24, 2005 order did not qualify for an emergency hearing under the judicial reassignment guidelines:

> "Jim Huntsman called wondering if he can get in sooner; I explained that it doesn't fall under the emergency temp reassignment guidelines. RLM." Court Administration Case Entries for file F7-98-2231, 10/28/2005, 10:45 [a.m.].

On October 28, 2005, petitioner appealed the September 19 and 30 and October 24 Orders in *Huntsman v. Huntsman*, No. A05-2168, and simultaneously applied for a supersedeas bond during appeal, *with a stay of proceedings and enforcement*, and also by letter on the same date to the court administrator objected to release of his security funds before entry of judgment authorizing such release.

On November 9, 2005, despite knowing of petitioner's filed appeal and application for a supersedeas bond and stay, trial court administration released petitioner's security funds of $84,568.32 to intervenor by cashier's check payable to the Minnesota Child Support Payment Center (*Affidavit of James R. Huntsman*, December 30, 2005, ¶ 5, Exhibit 3), which was then paid to respondent on November 11, 2005 (*Id.*, Exhibit 4), despite petitioner's several objections to doing so.

Having been denied opportunity of an immediate hearing in the trial court to return his $84,568.32, on January 20, 2006, petitioner moved the MCoA to order intervenor to return the $84,568.32 to court administration pending the outcome of his appeal. By its order of February 7, 2006, the MCoA denied his motion on grounds that his motion was not properly before that court because he should have first moved the trial court to return the funds. App. A2.

In *Huntsman v. Huntsman*, No. A05-2168, petitioner raised violation of his due-process and equal protection rights and violation of 42 U.S.C., Ch. 21, Subch. I, § 1983:

> "[T]he district court's refusal to consider appellant's motions for being untimely while simultaneously considering respondent's untimely Respondent's Remand Memorandum, Eggen Remand Affidavit, and Proposed Order (adopted verbatim) was discriminatorily prejudicial to appellant denying him due process and equal protection of the law and an abuse of discretion." Appellant's Brief, 17-18.
>
> "The district court erred at law in denying appellant's responsive motions by failing to state the legal and factual basis therefor. In denying appellant's timely motions for being untimely, the district court denied appellant his procedural due process rights under the U.S. Constitution, amends. V, XIV and the Minnesota Constitution, art. 1, § 7. Wherefore, this Court should reverse and vacate the September 19 and 30 orders and the December 22 judgment in their entirety and all subsequent orders and judgments based thereon, and remand for de novo proceeding." *Id.* at 18-19.
>
> "Intervenor seized appellant's supersedeas funds of $84,568.32 from [Washington County Court Administration] by cashier's check of October 31, 2005, three days after filing his notice of appeal, and released them to respondent on November 9, 2005." *Id.* at 46.
>
> "Therefore, the September 19 amended order was not effective upon filing since no judgment thereon had been entered. *Erickson* [*v. Erickson*, 430 N.W.2d 499, 500 (Minn. App. 1988)]; *Schaust* [*v. Town Bd. of Hollywood Tp., Carver Cty.*, 204 N.W.2d 646, 648 (Minn. 1973)]. Any enforcement of the September 30 amended order while it was not effective violated

appellant's procedural due process rights under the U.S. Constitution, amends. V, XIV and the Minnesota Constitution, art. 1, § 7 and benefit therefrom of unenforceability until entry. Thus, the release of appellant's supersedeas security funds deposited with [Washington County Court Administration] to intervenor Washington County and respondent Zenith Annette Huntsman was unauthorized, premature, and unlawful." *Id.*

"The October 24, 2005 order is clearly predicated on only the September 19 order. Therefore, the October 24 order was not authorized or effective when it was filed. Not being authorized, the October 24 order is appealable. (citation omitted). Appellant contends also that because neither the September 19 order nor the September 30 amended order was effective on October 24, the district court did not have subject matter jurisdiction so as to authorize any valid order predicated upon them. Wherefore, lack of subject matter jurisdiction of the October 24 order may be raised for the first time on appeal. (citation omitted). To the extent that entry of judgment of the September 30 amended order on December 22, 2005 might be considered a post-deprivation cure, it does not cure previous violation of appellant's rights of due process. *Armstrong v. Manzo*, 380 U.S. 545, 550-51 (1965) (ruling that proceeding post-deprivation of due process right does not cure the deprivation)." *Id.* at 46-47.

"Since intervenor is providing full IV-D services, it is bound by 42 U.S.C., Ch. 7, Subch. IV, Part D. Intervenor had a choice not to seize and distribute appellant's security funds (42 U.S.C. § 654b(c)(2)), but chose to seize and distribute them to respondent. On December 9, 2005, appellant renewed his $17,000.00 bond. On January 17, 2006, the district

court approved appellant's $40,000.00 bond required by its November 23 order, and appellant then served and filed a copy of that bond and the other bond renewal with intervenor and respondent. Wherefore, under Civ. App. P. Rule 108.01, .03, and under 42 U.S.C. § 654b(c)(2) and 42 U.S.C., Ch. 21, Subch. I, § 1983, appellant contends intervenor must return appellant's $84,568.32 to [Washington County Court Administration]. *Id.* at 48.

"Intervenor County of Washington must return $84,568.32 of appellant's security funds it seized from WCCA because (1) on the day it seized the funds, there was no order or judgment in effect that authorized such seizure, thereby denying appellant benefit of his due process rights, and (2) appellant posted a supersedeas bond approved by the district court on January 17, 2006, thereby staying proceedings and enforcement of the judgment. *Id.* at 51.

On September 26, 2006, petitioner's appeal was affirmed on all issues. *Huntsman v. Huntsman*, No. A05-2168, 2006 Minn. App. LEXIS 1099, 2004 WL 2729284 (Minn. App. Sept. 26, 2006); App. B. This affirmation resulted in all but a few thousand dollars of petitioner's $140,000 supersedeas bonds and funds to be released to respondent Huntsman. On November 13, 2006, the MCoA ordered petitioner to pay respondent $1,111.32 in costs and disbursements as the prevailing party and $8,000 in her appellate attorney fees.

On October 26, 2006, petitioner petitioned the Minnesota Supreme Court for review (App. C) of *Huntsman v. Huntsman*, No. A05-2168, which was denied December 20, 2006 (App. D). Petitioner was ordered to pay respondent $6,061.00 in attorney fees to respond to the petition for review. Order, January 31, 2007.

In said petition for review, petitioner raised violation of

his constitutional rights:

> "**(a)** Did the district court err (1) by ruling petitioner's responsive motions, memorandum, and affidavit untimely and by not stating the rule violated, thereby denying him due-process constitutional rights of opportunity to be heard; and (2) alternatively in finding his motions lacked a legal and factual basis?" App. C2.
>
> "Were petitioner's supersedeas funds unlawfully seized from court administration and distributed to respondent where (1) on the date they were seized, there was no order or judgment in effect; (2) the order authorizing release to intervenor was obtained by fraud upon the court by intervenor's and respondent's attorneys; and (3) petitioner provided an additional, approved supersedeas bond?" App. C2-3.
>
> "The interests of justice and integrity of the judicial process and profession compel review because intervenor's and respondent's attorneys secured an order ex parte to release petitioner's supersedeas funds by willful failure to disclose the superseding, unenforceable amended order, thereby committing a willful misrepresentation and fraud upon the court and petitioner, and violating Minn. R. Prof. Cond. 3.3(a)(1),(2),(d) and constitutional due process." App. C3.
>
> "The Supreme Court's supervisory and equitable powers are necessary because the lower courts have denied petitioner his due-process rights of (1) opportunity to be heard by erroneously ruling on a motion-timing rule; (2) entry of a judgment before its execution; (3) compliance with the express remand direction to calculate child support and maintenance for one year based on his job-severance payment; (4) jurisdiction; and (5) imputing income as required by

statute." App. C4.

"Despite petitioner's objections, the court's acceptance and adoption of respondent's untimely served and filed reply documents and ruling of untimeliness and refusal to hear petitioner's timely submissions were an abuse of discretion (Rule 303.03(a)(5); timing is discretionary, not jurisdictional), and prejudicially denied him rights to be heard and of equal protection of the law under the U.S. Const., amend. XIV and Minn. Const., art. I, § 7. *Londoner v. Denver*, 210 U.S. 373,386 (1908) ("A hearing in its very essence demands that he who is entitled to it shall have the right to support his allegations by argument however brief, and, if need by [*sic*], by proof, however informal."). The [Court of Appeals] erred by prejudicially not addressing petitioner's claim of respondent's reply untimeliness." App. C6.

"**(1)** Seizure of petitioner's supersedeas funds before entry of judgment on the September 30 order as required by Minn. R. Civ. P. 58.01 violated petitioner's due-process rights under the U.S. Const., amends. IV, XIV and the Minn. Const., art. I, § 7, 10 to entry of the judgment before its execution. *Erickson v. Erickson*, 430 N.W.2d 499, 500 (Minn. App. 1988); *Schaust v. Town Bd. of Hollywood Tp., Carver Cty.*, 204 N.W.2d 646,648 (Minn. 1973); *Life & Fire Ins. Co. of N.Y. v. Heirs of Wilson*, 33 U.S. 291,303 (1834); *Silsby v. Foote*, 61 U.S. 290,295 (1857); *U.S. v. F.&M. Schaefer Brewing Co.*, 356 U.S. 227,232,236 (1958); *Yznaga Del Valle v. Harrison*, 93 U.S. 233,234-35 (1876)." App. C8.

"**(3)** Said seizure and distribution violated petitioner's due-process rights under the U.S. Const., amend. XIV and Minn. Const., art. I, § 7 to a stay by his posting multiple bond instruments under R. Civ. P. 62.03 and

R. Civ. App. P. 108.05. *Career Resources v. Pearson Candy Co.*, 428 N.W.2d 606,607 (Minn. App. 1988). App. C8.

"The [Court of Appeals] erred in ruling its February 7, 2006 order barred appellate review of unlawful seizure. The [Court of Appeals] order admits no jurisdiction over petitioner's appellate motion because he failed to first move the district court. *Bode v. Minn. Dept. of Nat. Resources*, 594 N.W.2d 257,261 (Minn. App. 1999); *Duxbury v. Dahle*, 81 N.W. 198 (Minn. 1899) (motion not complying with procedural requirements confers no jurisdiction). If there was no jurisdiction, there was no valid 'hearing' and decision on the merits." App. C9.

Argument for Granting Certiorari

Introduction

In 2005, petitioner's case was one of 247,907 active Title IV-D support orders in Minnesota and one of 15.9 million active Title IV-D support orders nationwide. *2006 Minn. Child Support Performance Report, Minn. Dept. of Human Services*, p.1; http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-4252G-ENG. Because every Title IV-D support order involves an obligor, an obligee, and at least one child, nationwide Title IV-D support orders constitute probably the largest and most pervasive area of litigation, involving more than 50 million persons and thousands of county IV-D agencies in virtually every county in every state.

An obligor's monetary and real property assets are sometimes seized, and occupational and driver's licenses are sometimes revoked by the IV-D agency as a result of proceedings such as those in this case. Absent extraordinary circumstances, at least in Minnesota, an obligor father is ordered to pay full child support but allowed "visitation"

with his children about 15% of the time. This Court's members have probably heard of or read of anecdotal incidents of a father kidnapping his own child(ren). The stereotyped obligor father is a deadbeat dad who wants little or nothing to do with his children. It is incongruous with that stereotyping that he would commit a federal felony to be with them. It is the petitioner's opinion that one reason for some such desperate acts by an obligor is not simply rejecting the outcome of a fair hearing, but rather he was not given a fair hearing or fair appellate review.

In view of such grave consequences of Title IV-D proceedings, it is absolutely imperative that obligors, nearly always the father, be afforded all applicable constitutional rights at all stages. Under an onerous court docket from so many Title IV-D proceedings, the judicial process has become judicial processing, and as the present case illustrates, sometimes with total disregard for the most fundamental constitutional rights of the obligor. Yet, there are virtually no decisions from this Court requiring enforcement of even fundamental constitutional rights in IV-D proceedings.

To paraphrase a saying, one constitutional violation is anomalous; two are a coincidence; but several are a pattern. Petitioner seeks review to show a pattern of his constitutional rights being violated by a IV-D agency and the trial court and erroneously affirmed or simply ignored by the appellate courts, in hope this Court will consider it an opportunity to address and mandate compliance with fundamental constitutional rights in IV-D litigation. Presented questions I, II, and IV address fair, due-process hearings, and question III addresses overzealous and unlawful seizure of a person's property by a state government's county agency. Constitutional rights have little value if their violation is ignored or circumvented by rationalized interpretation. "Equal Justice Under Law" must be more than an inscription.

I. The Minnesota Court of Appeals erroneously interpreted the motion court rule and its consequences thereof.

The Minnesota Court of Appeals ("MCoA") erroneously ruled (App. B10) that petitioner's responsive motions, being on a remand, were governed by Minn. Gen. R. Prac. 303.03(a)(1) (App. F1) and therefore untimely even if served and filed ten days before the hearing, as he claimed.

Under Minnesota law, "In construing procedural rules, we first look to the plain language of the rule and its purpose." *Rubey v. Vannett*, 714 N.W.2d 417, 421 (Minn. 2006). "Rules 'shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.' ... and should be given liberal construction so as to effectuate that purpose. (citation omitted)." *Huntsman v. Huntsman*, 633 N.W.2d 852, 854 (Minn. 2001). Minnesota court rules reflect a preference that actions be determined on the merits and not on the basis of technical compliance with the rules (*Patterson v. Wu Family Corp.*, 608 N.W.2d 863, 867 (Minn. 2000)).

This Court has also adopted the plain-language principle in construing court rules. *Schiavone v. Fortune,* 477 U.S. 21, 28 (1986) ("The choice, ... is between recognizing or ignoring what the Rule provides in plain language. We accept the Rule as meaning what it says."); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

A. The Minnesota Court of Appeals' rule interpretation is contrary to (i) the plain language of the applicable court rule, (ii) case law, and (iii) the facts.

(i) Minn. Gen. R. Prac. 303.03(a)(1) clearly and unambiguously applies to the "initial moving party", who was respondent, who moved for the hearing and set its date, not the court or the petitioner. Petitioner was the responding party, raising new issues as well as responding to issues raised by respondent. As such, petitioner's responsive mo-

tions were clearly governed by Minn. Gen. R. Prac. 303.03(a)(2). Moreover, the MCoA's interpretation leads to impossible responsive compliance. In general application under the MCoA's interpretation, a responding party could not possibly respond within 14 days of the hearing if the initial moving party properly serves and files 14 days from the hearing.

(ii) The MCoA further erred by improperly effectively inserting non-existent language (*Tracy State Bank v. Tracy-Garvin Co-op.*, 573 N.W.2d 393, 394-95 (Minn. App. 1998)) into the rule, and by being contrary to case law that a remanded modification hearing is a continuation of the original proceeding. *McClelland v. Pierce*, 376 N.W.2d 217, 219-20 (Minn. 1985). Under *McClelland*, being under a remand changes nothing about the motion rule. Moreover, Minn. Gen. R. Prac. 303.03 has no language distinguishing a motion under a remand or continuance from any other motion.

(iii) The MCoA further erred in ruling petitioner's responsive motions were filed nine days before the hearing, based solely on the date of a clerk's entry of the documents into the trial court administration's database, as if superseding the trial court's findings of fact, which explicitly state petitioner's documents were filed ten days before the hearing, consistent with petitioner's hearing testimony under oath and the date on his check given to the clerk's office upon filing (App. E1).

B. The MCoA's rule interpretation caused error by excluding consideration of petitioner's relevant evidence.

The MCoA's judgment is contrary to petitioner's evidence related to his seeking employment wrongfully excluded by the trial court. The MCoA stated, "[O]nly James Huntsman's request to find that he made good-faith efforts to secure reemployment is responsive to Annette Huntsman's motion to address the remanded issues. *14-15; App. B10. The remand scope for that was through at least April 2003.

The MCoA erroneously concluded, "He regularly perused' newspaper want ads, but did not *inquire* about any intellectual property positions outside of law firms." *11; App. B8. (emphasis added). The actual deposition question and answer were that he had not *applied* for patent agent positions outside of law firms (as of December 2002), because there were no patent agent positions available to apply for. Petitioner had inquired numerous times as evidenced in his June and September 2003 and August 2, 2005 affidavits and the affidavit report of Anne Lockwood detailing petitioner's efforts and the employment market from May 2002 through summer 2005 (Stmt. of Case, *supra*, at 12-13), which the trial court rejected as untimely, and the MCoA excluded consideration of. The MCoA judgment has many other similarly mischaracterized conclusions that the limited space herein does not permit full elucidation of.

II. The Minnesota Court of Appeals erred by not addressing petitioner's claim of prejudicial selective enforcement of the same discretionary rule.

The motion timing requirements are not jurisdictional, but discretionary. Minn. Gen. R. Prac. 303.03(b); App. F2-3. By not addressing petitioner's claim of prejudicially selective enforcement of timeliness against petitioner and in favor of respondent, the MCoA erroneously affirmed the trial court's abuse of its discretion that violated petitioner's constitutional due-process right of a fair hearing and equal protection of the law.

A. Indisputable facts establish respondent's reply documents were untimely.

Petitioner claimed in his appeal that the trial court refused to consider respondent's reply documents as untimely, citing an unpublished opinion, which was the only opinion on point. Appellant's Brief, 17-18. By her affidavit, on August 8, 2005, respondent personally served petitioner her reply documents and filed them by mail only four days

before the hearing, in violation of Minn. Gen. R. Prac. 303.03(a)(3). *Barerra v. Muir*, 553 N.W.2d 104, 108 (Minn. App. 1996), *review denied* (Minn. Oct. 29, 1996) (ruling extra three days allowance for service by mail must be added to time deadline before hearing date). Respondent's proposed order of August 10, 2005 was indisputably untimely served by commercial delivery only two days before the hearing and received only one day before. *Id.* At the hearing, petitioner objected to admission of respondent's reply documents as untimely and violating his constitutional rights of due process and equal protection, and moved to strike them, which was denied. Despite its untimeliness, the trial court adopted verbatim respondent's August 10 proposed order as its September 19 Order. While petitioner's understands the practice of adopting a party's proposed findings or order, petitioner contends that the practice went too far, denying him a fair and impartial consideration of his evidence and arguments.

Petitioner does not argue violation of unequal protection by the rule's language, but rather violation of unequal protection by prejudicially selective enforcement against petitioner and in favor of respondent, where petitioner by the trial court's ruling and respondent by undisputed facts were similarly situated as untimely. Moreover, respondent never argued against, or even simply denied, petitioner's claim that her reply documents were untimely.

III. The Minnesota Court of Appeals erred in rejecting review of the issue of unlawful seizure of his property.

A. The MCoA erred in barring review of the issue by ruling its previous denial of a motion to return the funds constituted a hearing on the merits.

The MCoA order (App. A) admits having no jurisdiction over petitioner's appellate motion ("that question is not properly before this court"; App. A2) because he failed to

first move the district court. *See also Bode* at 261; *Duxbury* at 198 (motion not complying with procedural requirements confers no jurisdiction). If there was no appellate jurisdiction, there was no valid appellate "hearing" and decision on the motion's merits that could act to bar the issue in the appeal. Without jurisdiction, the MCoA's reasoning was only courtesy dicta, not a binding decision. Moreover, whether to order return of the funds is not the same issue of whether the County of Washington and respondent Huntsman unlawfully and unconstitutionally seized petitioner's property.

This issue arose after the hearing so that it could not have been raised at the hearing. However, according to court administration's records, petitioner did immediately try to obtain a hearing but was not allowed to do so, causing him then to move the appellate court for temporary relief. Allowing the County and respondent Huntsman access to the court for an ex parte hearing without notice to the petitioner and thereafter denying him opportunity to contest that proceeding is another selective due-process violation of petitioner's equal protection rights.

As to the substance and not the form of the issue, neither the County nor respondent Huntsman denies that when the County seized petitioner's funds and gave them to respondent Huntsman, there was no effective order or judgment in existence at the time. An order or judgment may not be enforced before it is effective, and by court rule (Minnesota Rule Civ. Proc. 58.01; App. F3), judgment must be entered before it is effective. *Erickson v. Erickson*, 430 N.W.2d 499, 500 (Minn. App. 1988); *Schaust v. Town Bd. of Hollywood Tp., Carver Cty.*, 204 N.W.2d 646, 648 (Minn. 1973).

The MCoA and the Minnesota Supreme Court have disregarded this Court's decisions regarding the rendering of an effective judgment. *Life & Fire Ins. Co. of N.Y. v. Heirs of Wilson*, 33 U.S. 291, 303 (1834); *Silsby v. Foote*, 61 U.S.

290, 295 (1857); *U.S. v. F.&M. Schaefer Brewing Co.*, 356 U.S. 227, 232, 236 (1958); *Yznaga Del Valle v. Harrison*, 93 U.S. 233, 234-35 (1876).

Petitioner claims that in blatant disregard for the integrity of the judicial process, the County and respondent Huntsman willfully committed fraud upon the court (*M.H. v. Caritas Family Services*, 488 N.W.2d 282, 289 (Minn. 1992)) and violated Minn. R. Prof. Cond. 3.3(a)(1),(2),(d) by not disclosing the superseding, unenforceable September 30 Order in obtaining the October 24 Order ex parte, rendering the October 24 Order void for lack of subject matter jurisdiction. Worse than this fraud itself is the courts' apparent lack of concern that officers of the court had willingly committed a fraud upon the court in order to seize $84,568.32. Had such an unlawful seizure occurred in a banking or financial services proceeding, it would not have been tolerated.

B. The MCoA's secondary grounds for denial were erroneous.

Assuming arguendo that the MCoA had jurisdiction to rule on the merits, the MCoA erred in stating, "Further, *Career Resources, Inc. v. Pearson Candy Co.*, 428 N.W.2d 606 (Minn. App. 1988), which appellant cites to support his argument, involved neither a question about whether the issue of returning previously seized assets was properly before this court, nor an application of Minn. R. Civ. App. P. 108.03." (App. A2). Petitioner retrieved the *Career Resources* appellate file from the archives and found that indeed it addressed both being properly before the court and an application of Minn. R. Civ. App. P. 108.03. Appellant's Reply Brief, p.24.

IV. The Minnesota Court of Appeals violated petitioner's due-process rights under res judicata and collateral estoppel in ruling the trial court could re-award respondent's attorney fees reversed on appeal but not remanded.

Respondent's award of attorney fees was reversed and not remanded in *Huntsman v. Huntsman*, A04-286. Respondent cross-petitioned for review of that reversal, but it was denied. Therefore, not being remanded, the reversal became final. A court must *strictly* follow a remand and may not deviate from it in the slightest. *Halverson v. Village of Deerwood*, 322 N.W.2d 761, 766 (Minn. 1982). Respondent admitted that the trial court had originally considered awarding both conduct-based and need-based attorney fees for petitioner's modification motion being frivolous modification. Petitioner argued they were therefore jurisdictionally barred by res judicata and collateral estoppel and also by due process. Appellant's Brief, pp.41-43; Appellant's Reply Brief, pp.15-18.

Petitioner argues that due process by its inherent nature of selective inclusion excludes some processes and that res judicata and collateral estoppel are due-process principles in that they preclude processes fairly litigated to finality as excluded from renewed due process. *See, for example, Baldwin v. Iowa State Traveling Men's Assoc.*, 283 U.S. 522, 525-26 (1931). Having been fairly and fully litigated, respondent's claim of those attorney fees was erroneously revived by the MCoA, because it had not been remanded.

V. The interests of justice justify certiorari.

Given the magnitude and scope of Title IV-D litigation cases, there is more than enough public interest involved to justify certiorari on the basis of the interests of justice. The social fabric of this great country comprises families, whose threads are unraveling at an alarmingly rate. The unraveling does not need to be exacerbated by yanks

from unfair judicial proceedings, however few. The nation's state courts are in need for guidance in Title IV-D litigation from this Court.

Conclusion

This petition establishes several occurrences of violation of petitioner's constitutional rights of due process, equal protection of the law in judicial proceedings, and protection from unlawful seizure of his property to either preclude his evidence and arguments or ignore them if not able to preclude them so as to continue burdening him with onerous support obligations unjust and unfair under the facts and law.

At the moment his constitutional right to present his case in full at the trial court level was violated, all the appellate decisions are rendered moot, for they cannot properly be based on petitioner's case's deficiencies if he was wrongfully precluded from presenting his case fully at his hearing in the first place. *Grannis v. Ordean*, 234 U.S. 385, 394 (1914); *Londoner v. Denver*, 210 U.S. 373, 386 (1908) ("A hearing in its very essence demands that he who is entitled to it shall have the right to support his allegations by argument however brief, and, if need by [*sic*], by proof, however informal."). Even if no one violation were itself dispositive of a reversible deprivation of constitutional rights, the cumulative effect of such violations denied petitioner a fair and impartial remanded modification hearing and appellate review, justifying certiorari. *Chambers v. Mississippi*, 410 U.S. 284, 290 (1973).

For the foregoing reasons, petitioner prays his petition for writ of certiorari be granted.

Dated: March 19, 2007 Respectfully submitted,

James R. Huntsman

Petitioner, pro se

No.: _____

In the Supreme Court of the United States

James Richard Huntsman, Petitioner,

v.

Zenith Annette Huntsman,
f/k/a Zenith Annette Morgan, Respondent,

and

County of Washington of the State of Minnesota,
Respondent.

On Petition for Writ of Certiorari to the Minnesota Court of Appeals

APPENDIX

James R. Huntsman, Petitioner, pro se
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TABLE OF APPENDICES

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Appendix A

Order, Feb. 7, 2006
Minnesota Court of Appeals

STATE OF MINNESOTA
COURT OF APPEALS

OFFICE OF
APPELLATE COURTS
FEB-7-2006
FILED
[stamped]

In re the Marriage of:
James Richard Huntsman,
petitioner,

ORDER

Appellant,

A05-2168

vs.

Zenith Annette Huntsman,
f/k/a Zenith Annette Morgan'

Respondent

Considered and decided by Toussaint, Chief Judge; Kalitowski, Judge; and Stoneburner, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

In this appeal after remand in a dissolution dispute involving, among other things, pro se appellant's arrearages on various obligations to respondent, appellant notes that he posted the supersedeas bond set by the district court and moves this court to order the county to return to the district court administrator certain funds that the district court administrator had obtained from appellant and released to the Child Support Payment Center as payment of amounts

appellant owed respondent. By letter, respondent opposes the motion. The county did not respond to the motion.

Because appellant's motion papers do not show or allege that his demand to have the released funds returned to the district court administrator was presented to the district court, that question is not properly before this court. *See David N Volkmann Constr. v. Isaacs*, 428 N.W.2d 875, 877 (Minn. App. 1988) (stating questions regarding stays pending appeal are to be presented to the district court in the first instance); *see also Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating, generally, appellate courts do not address questions not presented to and considered by the district court). Moreover, Minn. R. Civ. App. P. 108.43, which appellant admits applies here, states that posting a supersedeas bond "shall stall all *further* proceedings in the trial court" on the appealed rulings. (Emphasis added). Here, appellant did not post the supersedeas bond until two months after the funds were released and he does not allege that he moved to stay release of the funds pending his posting of the supersedeas bond. Therefore, the posting of the bond did not necessarily require return of the funds. Further, *Career Resources, Inc. v. Pearson Candy Co.*, 428 N.W.2d 606 (Minn. App. 1988), which appellant cites to support his argument, involved neither a question about whether the issue of returning previously seized assets was properly before this court, nor an application of Minn. R. Civ. App. P. 108.03.

Appellant also argues that under 42 U.S.C.A. § 654b(c)(2) (West 2003), it is not "necessary" that the public authority seize and release an obligor's security funds pending appeal, and that here, the seizure of his funds before judgment was entered on the relevant orders deprived him of due process of law. But 42 U.S.C.A. § 654b(c)(2) makes clear that "[t]he State disbursement unit *may* delay the distribution of collections toward arrearages until resolution of any timely appeal with respect to such arrearages." (Emphasis added).

Therefore, on the current record, that provision, by itself, does not require delaying release of the funds until resolution of this appeal. Also, not only was the due-process question not raised in district court, but, as noted above, appellant does not allege that he moved to stay release of the funds pending his posting of a supersedeas bond.

IT IS HEREBY ORDERED appellant's motion to order the return of the released funds is denied.

Dated: February 7, 2006

BY THE COURT

/Edward Toussaint/
Chief Judge

MK:mbs

Appendix B

***Huntsman v. Huntsman*, A05-2168**
September 26, 2006
2006 Minn. App. Unpub. LEXIS 1099

In re the Marriage of: James Richard Huntsman, petitioner,
Appellant,

vs.

Zenith Annette Huntsman,
f/k/a Zenith Annette Morgan,
Respondent.

A05-2168

COURT OF APPEALS OF MINNESOTA

2006 Minn. App. Unpub. LEXIS 1099

September 26, 2006, Filed

NOTICE: [*1] THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

PRIOR HISTORY: Washington County District Court File No. F7-98-2231. Hon. Stephen L. Muehlberg.

Huntsman v. Huntsman, 2004 Minn. App. LEXIS 1344 (Minn. Ct. App., Nov. 30, 2004).

COUNSEL: James R. Huntsman, Appellant, Pro se, Mounds View, MN.

For Respondent: Brad C. Eggen, Law Offices of Brad C. Eggen, Minneapolis, MN.

JUDGES: Considered and decided by Klaphake, Presiding Judge; Lansing, Judge; and Minge, Judge.

OPINION

LANSING, Judge

In this appeal from judgment following remand in a child-support and spousal-maintenance proceeding, James Huntsman raises five issues. He contends that the district court failed to comply with this court's remand instructions; erred by denying his motions to reopen the record to reconsider his child-support and maintenance obligations; and abused its discretion by ordering him to pay attorneys' fees, releasing funds held on deposit, and maintaining the supersedeas bond at its current amount. Because the district court properly complied with the remand directions, correctly applied the law, reasonably exercised its discretion, and relied on facts supported by the record, we affirm.

FACTS [*2]

James and Zenith (Annette) Huntsman dissolved their marriage in January 2000. They stipulated that Annette Huntsman would have sole physical custody of their minor child but were unable to agree on issues relating to child support and spousal maintenance. Following a contested hearing, the district court established James Huntsman's child-support obligation and ordered on-going spousal maintenance with an increased amount for a two-year period, which would allow Annette Huntsman to complete an educational program that would enhance her employment prospects. Because this appeal builds on several years of litigation and multiple earlier appeals related to child support and spousal maintenance, the facts essential to its resolution are enmeshed with the facts of the full course of the Huntsmans' litigation.

James Huntsman first appealed from the district court's September 2000 amended dissolution judgment setting his support obligations. We affirmed the district court's

support determinations, but remanded "for a clear calculation of [James Huntsman's] net income." *Huntsman v. Huntsman*, 2002 Minn. App. LEXIS 393, No. C1-00-1923, 2002 WL 556142, at *1, *4 (Minn. App. Apr. 16, 2002) (*Huntsman* [*3] *II*), *review denied* (Minn. June 26, 2002); *see also Huntsman v. Huntsman,* 633 N.W.2d 852, 856 (Minn. 2001) (*Huntsman I*) (reversing court of appeals' determination that appeal was untimely and reinstating appeal). Before we issued our decision in *Huntsman II*, James Huntsman moved the district court to vacate its amended dissolution order. The district court denied the motion and ordered him to pay Annette Huntsman conduct-based attorneys' fees. We affirmed. *Huntsman v. Huntsman*, 2002 Minn. App. LEXIS 1010, No. C9-02-85, 2002 WL 2005472, *3 (Minn. App. Sept. 3, 2002) (*Huntsman III*), *review denied* (Minn. Nov. 19, 2002).

On April 2, 2002, James Huntsman received notice that 3M was terminating his position as a senior intellectual-property specialist. He had the option to work until ninety days after the notice, through June 2002, but chose to end his employment in mid-May, after only forty-five days. On April 29, before his employment ended, he moved to reduce his support obligations based on a substantial change of circumstances. The district court considered his motion along with the issues remanded in *Huntsman II*. In April 2003 the district court recalculated [*4] James Huntsman's net income, upheld a cost-of-living adjustment to his support obligations, upheld income-withholding from his unemployment benefits, and found that James Huntsman was voluntarily underemployed.

The district court amended its order in June 2003 to reflect the total amounts James Huntsman owed Annette Huntsman, because few of the maintenance and support obligations had been honored. In December 2002 and February 2004 the court ordered attachment and seized James Huntsman's 3M severance payments as security for these

obligations. The district court also entered judgment on the 2003 orders in February 2004, and ordered James Huntsman to pay conduct-based attorneys' fees and reimburse Annette Huntsman for costs incurred to respond to frivolous motions. James Huntsman appealed.

In November 2004 we affirmed the district court's denial of James Huntsman's motion to modify, affirmed the validity of the district court's attachment orders, and affirmed its calculation of income for child support. *Huntsman v. Huntsman*, 2004 Minn. App. LEXIS 1344, No. A04-286, 2004 WL 2710044 (Minn. App. Nov. 30, 2004) (*Huntsman IV*), *review denied* (Minn. Feb. 23, 2005). We noted, however, that the [*5] district court neglected to deduct the cost of Annette Huntsman's health-insurance premium when calculating his net income for purposes of spousal maintenance. 2004 Minn. App. LEXIS 1344, at *6.

We also affirmed the district court's determination that James Huntsman had not demonstrated that a substantial change in circumstances made his existing maintenance obligation unfair. We noted, however, that because James Huntsman received a severance package following his employment termination in April 2002 and his severance income was included as income in determining his maintenance and support obligations, the case would be subject to automatic review one year from his final paycheck. 2004 Minn. App. LEXIS 1344, at *7. We held that James Huntsman could demonstrate a substantial change of circumstances if, despite good-faith efforts, he had not found a comparable job by April 2003. *Id.* Because the district court had previously ordered attachment of his severance payments, we further remanded "for a clear determination of how [James Huntsman's] severance package was distributed." 2004 Minn. App. LEXIS 1344, at *8. We held that, if the funds were used to pay arrearages, James Huntsman was entitled to a downward calculation of child support. [*6] *Id.* But if the

funds were held in trust for periodic payment, the severance pay was properly included in his income. *Id.*

Following our decision in *Huntsman IV,* James Huntsman moved in June 2005 for partial release of his supersedeas bond and to compel discovery. The district court denied the motion to compel discovery in July 2005 and reserved the remaining issues. Annette Huntsman moved in July 2005 for the district court to address the remanded issues, and the district court scheduled a hearing for August 12, 2005. On August 3, James Huntsman moved to reopen the record, to reduce or suspend his child-support and spousal-maintenance obligations retroactively to April 2002, to find that Annette Huntsman was voluntarily underemployed and had a substantial increase in her finances, to find that he had consistently made good-faith efforts toward reemployment, and to find that he had overpaid his insurance-premium obligation to Annette Huntsman.

In September 2005 the district court amended its February 2004 judgment to reflect its findings on remand. The district court found that its previous calculation of James Huntsman's income was correct and expressly stated that it [*7] had deducted the health-insurance payment to calculate his net income. The court further found that, after a thorough review of the record, its previous determinations of his maintenance and support obligations remained fair and reasonable. The district court denied James Huntsman's motions as untimely and alternatively found that the motions lacked a legal and factual basis. The court made findings under Minn. Stat. § 518.14 (2004) and ordered James Huntsman to pay Annette Huntsman attorneys' fees based on motions James Huntsman filed in 2002 and 2003, and also ordered him to pay attorneys' fees that Annette Huntsman incurred in responding to his 2005 motions. Finally, the district court directed the court administrator to release the funds on deposit to Annette Huntsman. The order provided that any residual

balance would remain on deposit and be released monthly to Annette Huntsman.

James Huntsman now appeals from the district court's September 2005 orders, challenging the district court's determinations on remand, its denial of his August 3 motions as untimely, its imposition of attorneys' fees, and its denial of his motion to return part of the supersedeas [*8] bond that he posted in *Huntsman II*. In January 2006 James Huntsman moved this court to order Washington County to return to him the money held as security and distributed to Annette Huntsman. We denied this motion in a special-term order. *Huntsman v. Huntsman*, A05-2168 (Minn. App. Feb. 7, 2006). As part of this appeal, James Huntsman also argues that the special-term order was in error.

DECISION

I

On remand a district court must faithfully follow the mandate of the remanding appellate court. *Halverson v. Village of Deerwood*, 322 N.W.2d 761, 766 (Minn. 1982). In *Huntsman IV* we directed the district court to recalculate James Huntsman's net income for purposes of maintenance, to review whether James Huntsman demonstrated good-faith efforts to find reemployment in the year following the termination of his 3M employment, and to clarify the status of James Huntsman's severance payments that were deposited as security for his maintenance and support obligations. We review a district court's factual findings for clear error. Minn. R. Civ. P. 52.01.

To determine net income, the costs of health-insurance coverage should be deducted from an obligor's [*9] gross income. Minn. Stat. § 518.551, subd. 5(b) (2004). On remand the district court clarified that it had deducted the cost of Annette Huntsman's health-insurance coverage when it

calculated James Huntsman's net monthly income. James Huntsman is now challenging the duration of his obligation to provide health-insurance coverage. But this is a new issue that could have been raised earlier and was not. James Huntsman did not raise it in his earlier motions or appeals, it is outside the scope of this court's remand order, and his untimely motion following remand does not preserve it for appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988) (holding that appellate court will not review issues not properly presented to district court). Furthermore, to the extent that James Huntsman attempts to raise the issue through references to arguments in earlier district court orders or judgments, that attempt has been precluded by a special-term order expressly dismissing these portions of his appeal. *Huntsman v. Huntsman*, No. A05-2168 (Minn. App. Nov. 2, 2005) (dismissing arguments appealed from 2000, 2003, or 2004 orders and judgments). [*10]

James Huntsman next challenges the district court's determination on remand that he did not make good-faith efforts to find reemployment. James Huntsman's employment involuntarily terminated in May 2002. Although his severance payment of approximately $ 93,800 was divided into two payments distributed in 2003 and 2004, we held that the severance payments should be viewed as one year of income covering the twelve months after his 3M employment ended. *Huntsman IV*, 2004 Minn. App. LEXIS 1344, 2004 WL 2710044, at *7. We therefore directed the district court to examine on remand whether James Huntsman had demonstrated that, despite good-faith efforts, he was unable to find employment one year from his last 3M payment. *Id.*

An obligor's unjustifiable limitation of income will not suspend a maintenance and support obligation. *Fulmer v. Fulmer*, 594 N.W.2d 210, 213 (Minn. App. 1999) (providing for imputation of income when it is unjustifiably self-limited). To evaluate whether unemployment or underemployment is in

good faith, a court should consider an individual's ability to work, the availability of gainful employment, the individual's willingness to provide for dependents, and [*11] the individual's efforts to seek employment. *Garcia v. Garcia*, 415 N.W.2d 702, 705 (Minn. App. 1987). A court will not reward a lack of reasonable effort. *See Hecker v. Hecker*, 568 N.W.2d 705, 710 (Minn. 1997) (affirming district court's decision to impute income when obligor did not exercise reasonable efforts).

James Huntsman has a Ph.D. in physical chemistry, has an M.B.A. in management, has completed one year of law school, and is a licensed patent agent with the U.S. Patent and Trademark Office. He chose to leave his company six weeks earlier than required, foregoing nearly $ 11,000 in income. At the time of a December 2002 deposition, James Huntsman was still unemployed and testified that he did not anticipate finding employment in the next three months. He testified that, after he received his termination notice, he sent a letter to "all the major intellectual property law firms in the Twin Cities." He regularly "perused" newspaper want ads, but did not inquire about any intellectual property positions outside of law firms. He never met with the 3M human-resources manager to examine employment opportunities within 3M and he also told this manager [*12] that he intended to go on deferred retirement. In August 2002 James Huntsman enrolled in a paralegal program at a community college. He testified that his "prime objective" was to finish the two-year program and obtain an intellectual property paralegal position. Huntsman had a six-figure salary at 3M; his 2002 tax returns reflect an adjusted gross income of nearly $ 180,000. He expected his starting salary as a paralegal would be between $ 40,000 and $ 50,000. In October 2002 he temporarily stopped filing for unemployment benefits because he objected to income withholding. Huntsman did not work until July 2003 when he accepted a temporary job, paying $ 14 an hour, doing document production at a law firm. Based on James

Huntsman's minimal efforts to find employment within his areas of specialization and his sudden pursuit of a career that pays significantly less than his established earning capacity, the district court's finding that he remained voluntarily underemployed in mid-2003 is not clearly erroneous.

James Huntsman argues that the district court exceeded the scope of remand by ordering him to pay interest on his overdue maintenance and child-support obligations. But his responsibility [*13] for interest is not a discretionary directive from the district court; it is statutorily based. *See* Minn. Stat. § 549.09, subd. 2 (2004) (stating that unpaid balance stemming from judgment accrues interest from time judgment is entered).

Finally, we directed the district court to clarify the distribution of the severance payments subject to the district court's attachment orders. The district court added findings that the amount held as security, approximately $ 100,000, had not been distributed. The court ordered a prompt distribution of funds to Annette Huntsman, with the remaining balance kept on deposit with the court for monthly distributions to Annette Huntsman. The district court complied with each of this court's directives in *Huntsman IV*.

II

Nine days before the hearing scheduled to address the remanded issues, James Huntsman filed a motion to reopen the entire record. Including his motion and supporting documents, he presented the court with nearly 400 pages of material and sought modification of his maintenance and support obligations dating back to 2002. The district court denied the motions as untimely and further held that James [*14] Huntsman's motions lacked a legal and factual basis. The law and the record support the district court's decisions.

James Huntsman and Annette Huntsman dispute which court rule governs the timeliness of James Huntsman's August

2005 motion. The Minnesota General Rules of Practice for the District Courts provide that motions in family court proceedings are governed by rule 303. Minn. R. Gen. Pract. 301 (stating that family law matters are governed by rules 301 through 313). Rule 303.03 requires a moving party to serve and file motion papers at least fourteen days before a hearing. *Id.* 303.03(a)(1). A responding party that raises issues other than those raised in the initial motion must serve and file motion papers at least ten days before the hearing. *Id.* 303.03(a)(2). If the responding party addresses only the issues raised in the initial motion, filing is required five days before the hearing. *Id.* 303.03(a)(3).

Because the motion related to a remand, we conclude that subpart (a)(1) of rule 303, rather than subpart (a)(2), governs the time computation. Of the eight issues raised in his August 3 motions, only James Huntsman's request to find that he made good-faith efforts [*15] to secure reemployment is responsive to Annette Huntsman's motion to address the remanded issues. The remaining issues were wholly unrelated to this court's opinion in *Huntsman IV*. Instead, James Huntsman sought to reopen the record and substantially amend the district court's previous findings. The district court therefore properly denied his motions as untimely. But even if we were to apply the more generous time provisions in rule 303.03(a)(2), James Huntsman's motion was still untimely because he did not file his motion papers with the district court until August 3, the day after he served his motions on Annette Huntsman. The rules governing motion practice plainly require a moving party to serve the opposing party and file with the district court within the prescribed time limits.

And, even if the court had applied no time limit, the result would have been the same. The record supports the district court's conclusion that James Huntsman provided no legal or factual basis that would justify his motions to reopen the record and reevaluate all of the district court's previous

findings related to his maintenance and support obligations. Refusal to reopen a record is reviewed [*16] for an abuse of discretion. *Bolander v. Bolander*, 703 N.W.2d 529, 553 (Minn. App. 2005), *review dismissed* (Minn. Oct. 28, 2005). James Huntsman sought a redetermination of his maintenance and support obligations dating back to 2002 and of his continuing maintenance obligation. The appropriateness of his obligations through mid-2003 have already been determined, challenged, and affirmed on appeal. *Huntsman IV*, 2004, Minn. App. LEXIS 1344, 2004 WL 2710044; *Huntsman II*, 2002 Minn. App. LEXIS 393, 2002 WL 556142. The sole issue remanded in *Huntsman IV* that related to a change in James Huntsman's financial circumstances focused only on whether he could demonstrate a substantial change in circumstances in mid-2003, one year after his employment at 3M ended. Consideration of his maintenance and support obligations before mid-2003 is therefore inappropriate. *See In re Trust Created by Hill*, 499 N.W.2d 475, 484 (Minn. App. 1993) (holding that party may not relitigate issues identical to those on which final judgment has been entered and party had opportunity to be heard), *review denied* (Minn. July 15, 1993); *see also Huntsman v. Huntsman*, No. A05-2168 (Minn. [*17] App. Nov. 2, 2005) (specifically dismissing James Huntsman's claims appealed from orders and judgments entered in 2000, 2003, and 2004).

Although James Huntsman contends that his current income is insufficient to continue the pre-2003 amounts, he did not provide the district court with documentation of his income after 2002. Hence, the district court did not have any information indicating a substantial change in James Huntsman's financial circumstances. *See Bormann v. Bormann*, 644 N.W.2d 478, 481 (Minn. App. 2002) (holding that moving party has burden to provide district court with financial information to enable accurate determination of income); *Spooner v. Spooner*, 410 N.W.2d 412, 413 (Minn. App. 1987) (stating that failure to supply financial information

justifies adverse inferences).

James Huntsman also argues that his maintenance obligation should be reduced because Annette Huntsman's income has substantially increased, she has been voluntarily unemployed or underemployed, and because she did not obtain the teaching credentials that she had identified as a goal during the dissolution proceeding. This argument is flawed for two reasons. First, [*18] Annette Huntsman supplied the district court with her current financial records, and the documents do not indicate a substantial change in circumstances. Her tax returns indicate her income in 2004 was approximately $ 20,000, which does not approach the standard of living established during the Huntsmans' marriage. *See Peterka v. Peterka,* 675 N.W.2d 353, 358 (Minn. App. 2004) ("The purpose of a maintenance award is to allow the recipient and the obligor to have a standard of living that approximates the marital standard of living, as closely as is equitable under the circumstances."). Second, in 2000 the district court directed James Huntsman to pay, in addition to spousal maintenance, $ 500 a month for two years so Annette Huntsman might fulfill her education plans. James Huntsman, who has not complied in any way with this order, now argues that Annette Huntsman should not receive maintenance because she failed to fulfill her educational plans and is underemployed. Exclusive of interest and attorneys' fees, he owes Annette Huntsman nearly $ 95,000 in maintenance and child support. Having failed to supply what may be critical financial support, James Huntsman cannot [*19] credibly argue that Annette Huntsman's inability to obtain the necessary education for her teaching certification should be a basis for reducing his maintenance obligation. The record amply supports the district court's conclusion that, even if James Huntsman had filed timely motions, the record and the applicable law would not support his requests to reopen the record to reduce or eliminate his support obligations.

III

A district court may order attorneys' fees based either on a party's need or on another party's conduct. Minn. Stat. § 518.14, subd. 1 (2004). To impose attorneys' fees based on need, the court must find that the fees are necessary for the good-faith assertion of rights; the recipient does not have the means to pay the fees; and the party who is ordered to pay the fees does have the means. *Id.* Alternatively, a court may order attorneys' fees when a party "unreasonably contributes to the length and expense of the proceeding." *Id.* The district court has broad discretion to impose attorneys' fees, and, absent an abuse of this discretion, we will not reverse an attorneys' fees order. *Geske v. Marcolina*, 642 N.W.2d 62, 71 (Minn. App. 2002). [*20]

James Huntsman first contests the order requiring him to pay need-based attorneys' fees related to motions he made in 2002 and 2003 after we reversed the order for conduct-based fees in *Huntsman IV*. The district court did not abuse its discretion by ordering him on remand to pay the need-based attorneys' fees. Annette Huntsman initially moved for attorneys' fees in May 2003. Because the February 2004 order for attorneys' fees was based on conduct, the court did not address whether the need-based requirements of section 518.14 were satisfied. Consideration of the alternative basis on remand is permissible because the remand is equivalent to a continuation of the original proceeding. *McClelland v. Pierce*, 376 N.W.2d 217, 220 (Minn. 1985). The district court made findings on each of the criteria for ordering need-based fees. The district court is familiar with the parties, the history of the case, and their relative financial situations. The district court therefore did not abuse its discretion by ordering James Huntsman to pay attorneys' fees. *See Geske*, 642 N.W.2d at 71 (affirming need-based attorneys' fees when court was familiar with parties' [*21] financial history).

James Huntsman next challenges the district court's imposition of attorneys' fees based on his June and August 2005 motions. Before the district court addressed the remanded issues, which would determine James Huntsman's maintenance and support obligations and the extent of his arrearages, James Huntsman moved to release the funds deposited with the court as security for these payments. He then moved to reopen the record and essentially relitigate a wide range of issues. The record supports the district court's findings that James Huntsman's first motion was premature and that his second motion was unreasonable. The district court concluded that it was unreasonable not only because it was untimely, but because the motion alleged a change in financial circumstances, without providing "basic tax return evidence" or other documentation of his income. By requiring Annette Huntsman to respond to these motions, James Huntsman unreasonably contributed to the length and expense of the proceedings. The district court's order requiring James Huntsman to pay the $ 2,440 Annette Huntsman incurred in responding to the motions was not an abuse of discretion.

IV

The appellate [*22] rules do not provide for a rehearing in the Minnesota Court of Appeals. Minn. R. Civ. App. P. 140.01. Consequently James Huntsman may not, in his reply brief, revive his arguments for the return of the deposited funds that have been distributed; this court's February 2006 determination that these arguments may not be revisited bars reconsideration on appeal.

Furthermore, the special-term order was decided correctly. James Huntsman asserts that he could not have asked the district court to return the funds because the supersedeas bond he posted in January 2006 stayed the district court's jurisdiction over the case. But the rules of appellate procedure specifically provide that the district court "retains

jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from, and to enforce its order or judgment." Id. 108. James Huntsman's appropriate recourse was therefore to move the district court for return of the funds. *See Thiele*, 425 N.W.2d at 582-83 (holding that appellate court will not consider matters not presented to district court).

V

The purpose of a supersedeas bond is to assure that, [*23] pending a resolution on appeal, the party that prevailed in the district court does not bear the economic risk of the appeal. *County of Blue Earth v. Wingen*, 684 N.W.2d 919, 923 (Minn. App. 2004). James Huntsman argues that the district court erred by denying his June 2005 motion because he was entitled to release of part of his bond following *Huntsman II*. Huntsman's argument is unpersuasive because the present appeal is a continuation of *Huntsman II*, and a final resolution of the issues had not been reached at the time of his motion. The total amount of his obligation to Annette Huntsman, then spanning five and one-half years, had not been determined, and he had not been paying maintenance or child-support in the interim. His persistent refusal to comply with the district court's orders provides a reasonable basis for the district court to continue the bond as an assurance that Annette Huntsman will not continue to bear the economic risk of the recurrent appeals.

Affirmed.

Appendix C

Petition for Review to the Minnesota Supreme Court

STATE OF MINNESOTA
IN SUPREME COURT

PETITION FOR REVIEW OF
DECISION OF THE COURT OF APPEALS

APPELLATE COURT
CASE NUMBER: A05-2168

FILING OF COURT OF APPEALS' DECISION:
September 26, 2006

In Re the Marriage of
James Richard Huntsman, petitioner

Petitioner,

v.

Zenith Annette Huntsman,
f/k/a Zenith Annette Morgan, respondent,

Respondent.

TO: THE SUPREME COURT OF THE STATE OF MINNESOTA:

Petitioner James Richard Huntsman respectfully requests Supreme Court review of the above-entitled decision of the Court of Appeals upon the following grounds:

1. Statement of Legal Issues and Their Resolution by the Court of Appeals:

(a) Did the district court err (1) by ruling petitioner's responsive motions, memorandum, and affidavit untimely and by not stating the rule violated, thereby denying him due-process constitutional rights of opportunity to be heard; and (2) alternatively in finding his motions lacked a legal and factual basis?

> **Court of Appeals Resolution:** "Because the motion related to a remand, we conclude that subpart (a)(1) of rule 303, rather than subpart (a)(2), governs the time computation." "[Petitioner's] motion was still untimely because he did not file his motion papers with the district court until August 3…." A.260.

(b) Did the district court err by its failure to comply with the express remand mandate to "calculate" petitioner's child support and maintenance obligations for one year based on his $93,800 severance payment?

> **Court of Appeals Resolution:** The Court of Appeals ("CoA") ruled (A.260) that "*Huntsman IV*" directed to "clarify" distribution of the severance, but *clarify* occurs nowhere in *Huntsman IV*.

(c) Did the district court err in finding petitioner voluntarily underemployed, but if not, did it err in not imputing income to him as required by law, and in not reopening the record to admit necessary evidence?

> **Court of Appeals Resolution:** The CoA found the district court's finding that petitioner remained voluntarily underemployed and not reopening the record not clearly erroneous. A.259-61.

(d) Were petitioner's supersedeas funds unlawfully seized from court administration and distributed to respondent where (1) on the date they were seized, there was no order or judgment in effect; (2) the order authorizing release to

intervenor was obtained by fraud upon the court by intervenor's and respondent's attorneys; and (3) petitioner provided an additional, approved supersedeas bond?

Court of Appeals Resolution: The CoA ruled its February 7, 2006 special term order, denying petitioner's motion to order return of the funds, barred the issue of unlawful seizure upon appeal. A.262-63.

(e) Did the district court err in its multiple award of attorney fees to respondent?

Court of Appeals Resolution: Relitigation of reversed, conduct-based attorney fees as need-based fees was permissible, and award of bond-release motion fees was appropriate. A.262.

(f) Did the district court lack jurisdiction to re-impose petitioner's expired health-insurance obligation?

Court of Appeals Resolution: "[I]t is outside the scope of this court's remand order, and his untimely motion following remand does not preserve it for appeal." A.259.

2. Statement of the Criteria of the Rule Relied Upon to Support the Petition:

Minn. R. Civ. App. P. 103.04: The interests of justice and integrity of the judicial process and profession compel review because intervenor's and respondent's attorneys secured an order ex parte to release petitioner's supersedeas funds by willful failure to disclose the superseding, unenforceable amended order, thereby committing a willful misrepresentation and fraud upon the court and petitioner, and violating Minn. R. Prof. Cond. 3.3(a)(1),(2), (d) and constitutional due process. The CoA erroneously affirmed an abuse of discretion of accepting respondent's untimely reply submissions while rejecting petitioner's timely responsive motions as untimely; affirmed obligations based on former, lost-job income; and dismissed the issue of unlawful seizure as barred, resulting in unjust enrichment in excess of $90,000.

Minn. R. Civ. App. P. 117, subd. 2(a): A county agency's unlawful seizure of an obligor's supersedeas funds by enforcing an unenforceable support order bears on 246,000 statewide support orders. A.1-2.

Minn. R. Civ. App. P. 117, subd. 2(c): The Supreme Court's supervisory and equitable powers are necessary because the lower courts have denied petitioner his due-process rights of (1) opportunity to be heard by erroneously ruling on a motion-timing rule; (2) entry of a judgment before its execution; (3) compliance with the express remand direction to calculate child support and maintenance for one year based on his job-severance payment; (4) jurisdiction; and (5) imputing income as required by statute.

Minn. R. Civ. App. P. 117, subd. 2(d): A Supreme Court decision will help develop, clarify, and harmonize the law for enforcing judgments and securing a supersedeas bond and stay, in particular by multiple bond instruments during remand, without unlawful or premature seizure.

3. Statement of the Case.

In *Huntsman v. Huntsman*, A04-286 ("*Huntsman IV*", A.247), the CoA, reversing a modification decision, made three remand directives: (1) use petitioner's $93,800 job-severance to "calculate" his support and maintenance obligations from April 2002 through April 2003 (A.252-53); (2) determine whether petitioner made post job-loss, good-faith employment effort (A.253); and (3) "a correct calculation of [petitioner's] net monthly income" (A.251). Respondent moved for a hearing for August 12, 2005. Petitioner personally served and filed responsive motions and documents on August 2 (A.28-31,165,264). The court ruled petitioner's responsive documents untimely "as untimely *served*" (A.40) at 10 days before August 12 (A.34,35,37,240), denied him opportunity to be heard, but accepted respondent's untimely reply documents (A.27,213-15). Intervenor and respondent unlawfully and fraudulently seized $84,568 of petitioner's

funds before entry of judgment (A.127) of the September 30, 2005 Amended Order (A.48) under pretext of the September 19, 2005 order (A.32) as controlling (A.236), after which petitioner provided an approved bond.

4. Argument in Support of the Petition.

> "A statute prescribing the manner in which a constitutional right may be asserted . . . is to be given a liberal construction to avoid a sacrifice of that right on the altar of technicality." *Wiedemann v. Wiedemann*, 36 N.W.2d 810, 813 (Minn. 1949).

(a) The district court erred (1) by ruling petitioner's responsive motions, memorandum, and affidavit untimely; and (2) alternatively in finding his motions lacked a legal and factual basis.

(1) The court found petitioner's responsive motions filed "ten days before the hearing" (A.34, 37), and erred by ruling "should in all respects be denied as untimely *served*" (A.40), not untimely *filed*, and by not citing the rule violated. A.59-66. By plain language, Gen. R. Prac. 303.03(a)(2) governed the timing for petitioner's responsive motions on remand, a continuation of a modification proceeding. *McClelland v. Pierce*, 376 N.W.2d 217,220 (Minn. 1985). The CoA erred in ruling arbitrarily and capriciously, without reasoning, subpart (a)(1) governs responsive motions on a remand. A.260. The CoA's ruling petitioner's filings untimely as being "filed" on August 3 and not on August 2 is an erroneous conclusion from next-day processing of his submissions, filed at the close of August 2. *Cf.* A.163-64. Since the court administration's policy is to discard filing letters (*Affidavit of James R. Huntsman*, October 24, 2006), fairness and justice allow considering other documentary evidence. Also, the Statement of Facts in App. Br. (A.55) states "On August 2, 2005, appellant personally served and filed responsive motions, ...", which, by his signature and R.Civ.P. 11, constitutes certification of his filing date with

the court as August 2, 2005.

Despite petitioner's objections (A.242-44), the court's acceptance and adoption of respondent's untimely served and filed reply documents (A.28-31,213-15) and ruling of untimeliness and refusal to hear (A.240) petitioner's timely submissions were an abuse of discretion (Rule 303.03(a)(5); timing is discretionary, not jurisdictional), and prejudicially denied him rights to be heard and of equal protection of the law under the U.S. Const., amend. XIV and Minn. Const., art. I, § 7. *Londoner v. Denver*, 210 U.S. 373,386 (1908) ("A hearing in its very essence demands that he who is entitled to it shall have the right to support his allegations by argument however brief, and, if need by [*sic*], by proof, however informal."). The CoA erred by prejudicially not addressing petitioner's claim of respondent's reply untimeliness.

(2) The finding his "motions lacked a legal and factual basis" is erroneous by being conclusory and vague. Petitioner was erroneously denied opportunity to argue their legal and factual basis, including his income through mid-2003, which was the time limit set by the remand, and also for 2004 and 2005.

(b), (c) The district court did not comply with the remand mandate to recalculate support and erred in finding petitioner voluntarily underemployed and in not properly imputing income to him.

A court must *strictly* follow a remand. *Halverson v. Village of Deerwood*, 322 N.W.2d 761, 766 (Minn. 1982). *Huntsman IV* directed: (1) "[F]or the one year following his termination, appellant has a severance [of $93,800] from which child support and spousal maintenance can be calculated." (A.253; *see* A.75-83,114-15,170-73), not *clarified*; and (2) determine whether petitioner made good-faith effort to find employment (A.253). The September 19 and 30 orders show **no $93,800 or net income/obligation calcula-**

tions based thereon at all, and erroneously impute petitioner's original base income and $1,567/month profit-sharing. A.145,154. Petitioner agreed to pay the child's documented support needs of $450/month (A.82-83,173-74), but the court erred by imposing $1,299/month (A.45-46,154). Finding respondent's income of $18,000 in 2002, $13,600 in 2003, and $51,000 in 2004 (A.38) versus $0 in 2000, the original maintenance basis, NOT a substantial change is clearly erroneous under Minn. Stat. § 518.64, subd.2(a)(1), (2), (b)(1), (c)(1) (2005), especially absent findings of respondent's current expenses and income. The issue of insurance-premium deduction was remanded (A.251) and raised (A.73-75,112-14,194-95).

The court erred in finding petitioner voluntarily underemployed by adopting respondent's distorted and misleading proposed order verbatim (*cf.* A.216+ to A.32+; *Bliss v. Bliss*, 493 N.W.2d 583,587,590 (Minn.App. 1992)) and by refusing to consider, for being untimely, petitioner's rebuttal and employment evidence that included using 22 employment resources, applying to 62 different employers and for 25 different job types, and a QRC's expert testimony about petitioner's efforts and the job market (A.66-71,181-86). Such finding is clearly erroneous and not supported by the evidence as a whole. *Kornberg v. Kornberg*, 525 N.W.2d 14,19 (Minn.App. 1995); R.Civ.P. 52.02. The court erred in not reopening the record to admit petitioner's evidence necessary to the remand issues. A.83-86,103-111,168-70. Even if petitioner were voluntarily underemployed, the court erred by failing to impute income as required by Minn. Stat. § 518.551, subd. 5b(d) (*Kuchinski v. Kuchinski*, 551 N.W.2d 727, 728-29 (Minn.App. 1996)) and instead re-imposing the original obligations. A.45-46,72-73,114-15. The CoA's criticizing petitioner for taking a $14/hr job (A.260) is unfair when it was his only job offer in over a year, and he was being treated for clinical depression (A.10, 13) due to his long unemployment, while respondent, having a degree in teach-

ing chemistry, a degree in medical technology, and once a realtor's license, is deemed making acceptable employment effort by selling fruit juice from home (A.205). The CoA erred by reweighing petitioner's denied submissions and opining on their merits to justify petitioner's denied opportunity to provide his arguments and financial evidence at the hearing. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

(d) Petitioner's supersedeas funds were unlawfully seized and distributed.

(1) Seizure of petitioner's supersedeas funds (A.92-95,118-26) before entry of judgment (A.127) on the September 30 order as required by Minn. R.Civ.P. 58.01 violated petitioner's due-process rights under the U.S. Const., amends. IV, XIV and the Minn. Const., art. I, § 7, 10 to entry of the judgment before its execution. *Erickson v. Erickson*, 430 N.W.2d 499, 500 (Minn.App. 1988); *Schaust v. Town Bd. of Hollywood Tp., Carver Cty.*, 204 N.W.2d 646,648 (Minn. 1973); *Life & Fire Ins. Co. of N.Y. v. Heirs of Wilson*, 33 U.S. 291,303 (1834); *Silsby v. Foote*, 61 U.S. 290,295 (1857); *U.S. v. F.&M. Schaefer Brewing Co.*, 356 U.S. 227,232,236 (1958); *Yznaga Del Valle v. Harrison*, 93 U.S. 233,234-35 (1876). **(2)** Intervenor and respondent willfully committed fraud upon the court (*M.H. v. Caritas Family Services*, 488 N.W.2d 282,289 (Minn. 1992)) and violated Minn. R. Prof. Cond. 3.3(a)(1),(2), (d) by not disclosing the superseding, unenforceable September 30 order in obtaining the October 24, 2005 release order (A.236) ex parte. **(3)** Said seizure and distribution violated petitioner's due-process rights under the U.S. Const., amend. XIV and Minn. Const., art. I, § 7 to a stay by his posting multiple bond instruments under R.Civ.P. 62.03 and R.Civ.App.P. 108.05 (A.94-95,118-126). *Career Resources v. Pearson Candy Co.*, 428 N.W.2d 606,607 (Minn.App. 1988). **(4)** The September 30 Amended Order, not being final (*Indianhead Truck Line, Inc. v.*

Hvidsten Transport, Inc., 128 N.W.2d 334, 341 (Minn. 1964)) and subject to appeal, erroneously and unlawfully ordered distribution of petitioner's supersedeas funds before finality of the litigation.

The CoA erred in ruling its February 7, 2006 order (A.160) barred appellate review of unlawful seizure. The CoA order admits no jurisdiction over petitioner's appellate motion because he failed to first move the district court. *Bode v. Minn. Dept. of Nat. Resources*, 594 N.W.2d 257,261 (Minn.App. 1999); *Duxbury v. Dahle*, 81 N.W. 198 (Minn. 1899) (motion not complying with procedural requirements confers no jurisdiction). If there was no jurisdiction, there was no valid "hearing" and decision on the merits.

(e) The district court erred in its multiple award of attorney fees to respondent.

Reconsideration of reversed attorney fees was not remanded. Petitioner argued they were jurisdictionally barred by res judicata and collateral estoppel (A.88-90, 115-18, 190-91), which the CoA did not address. Petitioner's motion to release some bond was in accordance with R. Civ. App. P. 108.01, subd.3.

(f) The district court lacked jurisdiction to re-impose petitioner's expired insurance obligation.

Respondent did not move for modification to extend petitioner's obligation to pay her medical insurance premiums before his obligation terminated by law. Petitioner's obligation was permanently extinguished by res judicata and collateral estoppel (A.75), and the district court lacked jurisdiction to reinstate it sua sponte. *Loo v. Loo*, 520 N.W.2d 740,744 (Minn. 1994). Since this litigation is a continuation of the original modification proceeding (*McClelland*), jurisdiction and void judgment may be raised

at any point (*Bode* at 260), which petitioner did (A.73-75,112-14,194-95).

Wherefore, petitioner prays for review, reversal, and an opportunity to be fairly heard on the merits.

Dated: October 26, 2006 Respectfully submitted,

/James R. Huntsman/

2570 Moundsview Drive
Mounds View, MN 55112-4110
(612) 766-8436

Appendix D

Order, Dec. 20, 2006
Minnesota Supreme Court

STATE OF MINNESOTA
IN SUPREME COURT

A05-2168

OFFICE OF
APPELLATE COURTS
DEC-20-2006
FILED
[stamped]

In re the Marriage of:
James Richard Huntsman,

Petitioner,

vs.

Zenith Annette Huntsman, f/k/a
Zenith Annette Morgan,

Respondent

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the motion of James Richard Huntsman to consolidate the two petitions for further review filed in the above-entitled mater be, and the same is, granted.

IT IS FURTHER ORDERED that the petitions of James Richard Huntsman for further review be, and the same are, denied.

Dated: December 20, 2006

By the court:

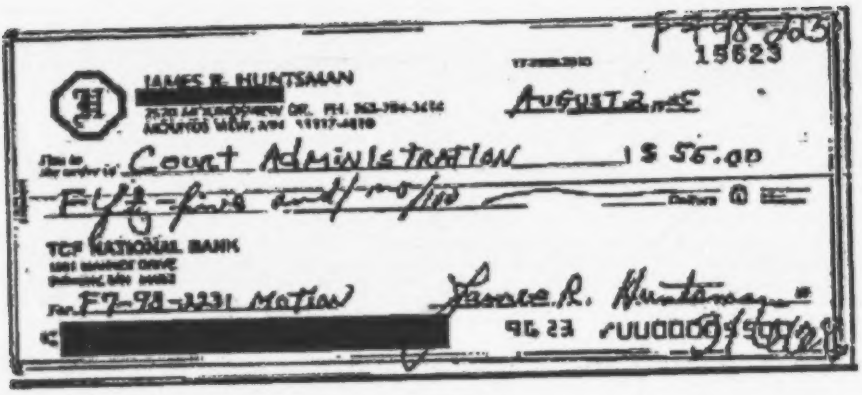
/Russell Anderson/

Russell A. Anderson
Chief Justice

ANDERSON, G. Barry, J., took no part in the consideration or decision of this case.

Appendix E

Affidavit Exhibit



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Appendix F

Minnesota Court Rules and Statutes

Rules of Practice – District Courts (2005)

[a.k.a. General Rules of Practice ("Gen. R. Prac.")

Title IV. Rules of Family Court Procedure

Part A. Proceedings, Motions, and Orders

Rule 301. Applicability of Rules. Rules 301 through 313 and, where applicable, the Minnesota Rules of Civil Procedure shall apply to family law practice except where they are in conflict with applicable statutes or the Expedited Child support Process Rules, Minn. Gen. R. Prac. 351 through 379.

....

* * *

Rule 303.03. Motion Practice. [in relevant part]

(a) Requirements for Motions.

(1) *Moving Party, Supporting Documents, Time Limits.* No motion shall be heard unless the initial moving party pays any required motion filing fee, serves a copy of the following documents on opposing counsel and files the original with the court administrator at least 14 days prior to the hearing:

(i) Notice of motion in form required by Minn. Gen. R. Prac. 303.01(a);

(ii) Motion;

(iii) Any relevant affidavits and exhibits; and

(iv) Any memorandum of law the party intends to submit.

(2) *Motion Raising New Issues.* A responding party raising new issues other than those raised in the initial motion shall pay any required motion filing fee, serve a copy of the following documents on opposing counsel and file the original with the court administrator at least 10 days prior to the hearing:

(i) Notice of motion in form required by Minn. Gen. R. Prac. 303.01(a);

(ii) Motion;

(iii) Any relevant affidavits and exhibits; and

(iv) Any memorandum of law the party intends to submit.

(3) *Responding Party, Supporting Documents, Time Limits.* The party responding to issues raised in the initial motion, or the party responding to a motion which raises new issues, shall pay any required motion filing fee, serve a copy of the following documents on opposing counsel and file the original with the court administrator at least five days prior to the hearing, inclusive of Saturdays, Sundays, and holidays:

(i) Any memorandum of law the party intends to submit

(ii) Any relevant affidavits and exhibits.

(4) *Computation of Time for Service and Filing By Mail.* Whenever this rule requires documents to be filed with the court administrator within a prescribed period of time before a specific event, filing may be accomplished by mail, subject to the following: (i) 3 days shall be added to the prescribed period; and (ii) filing shall not be considered timely unless the documents are deposited in the mail within the prescribed period. Service of documents on parties by mail is subject to the provisions of Minn. Civ. R. P. 5.02 and 6.05.

(5) *Post-Trial Motions.* The timing provisions of Section 303.03(a) do not apply to post-trial motions.

(b) Failure to Comply. In the event an initial moving party fails to timely serve and file documents required in this rule, the hearing may be canceled by the court. If responsive papers are not properly served and filed, the court may deem the initial motion or motion raising new issues unopposed and may issue an order without hearing. The court, in its discretion, may refuse to permit oral argument by the party not filing the required documents, may consider the matter

unopposed, may allow reasonable attorney's fees, or may take other appropriate action.

Advisory Committee Comment--1996 Amendment in relevant part

Rule 303.03(a)(5) is added by amendment to be effective January 1, 1994, in order to make it clear that the stringent timing requirements of the rule need not be followed on post-trial motions. This change is made to continue the uniformity in motion practice between family court matters and general civil cases, and is patterned on the change to Minn. Gen. R. Prac. 115.01(c) made effective January 1, 1993.

Minnesota Rule Civ. Proc. 58. Entry of Judgment; Stay (2005)

58.01 Entry

Unless the court otherwise directs, and subject to the provisions of Rule 54.02, judgment upon the verdict of a jury, or upon an order of the court for the recovery of money only or for costs or that all relief be denied, shall be entered forthwith by the court administrator; but the court shall direct the appropriate judgment to be entered upon a special verdict or upon a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49 or upon an order of the court for relief other than money or costs. Entry of judgment shall not be delayed for the taxation of costs, and the omission of costs shall not affect the finality of the judgment. The judgment in all cases shall be entered and signed by the court administrator in the judgment roll; this entry constitutes the entry of the judgment; and the judgment is not effective before such entry.

Minnesota Statutes, Chapter 518 (2005)

§ 518.54 Definitions. [in relevant part]

Subd. 1. Terms. For the purposes of sections 518.54 to 518.66, the terms defined in this section shall have the meanings respectively ascribed to them.

* * *

Subd. 3. Maintenance. "Maintenance" means an award made in a dissolution or legal separation proceeding of payments from the future income or earnings of one spouse for the support and maintenance of the other.

Subd. 4. Support money; child support. "Support money" or "child support" means:

(1) an award in a dissolution, legal separation, annulment, or parentage proceeding for the care, support and education of any child of the marriage or of the parties to the proceeding; or

(2) a contribution by parents ordered under section 256.87.

Subd. 4a. Support order. (a) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or administrative agency of competent jurisdiction for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, that provides for monetary support, child care, medical support including expenses for confinement and pregnancy, arrearages, or reimbursement, and that may include related costs and fees, interest and penalties, income withholding, and other relief. This definition applies to orders issued under this chapter and chapters 256, 257, and 518C.

* * *

Subd. 7. Obligee. "Obligee" means a person to whom payments for maintenance or support are owed.

Subd. 8. Obligor. "Obligor" means a person obligated to pay maintenance or support. A person who is designated as the sole physical custodian of a child is presumed not to be an obligor for purposes of calculating current support under section 518.551 unless the court makes specific written findings to overcome this presumption.

Subd. 9. Public authority. "Public authority" means the public authority responsible for child support enforcement.

* * *

Subd. 14. IV-D case. "IV-D case" means a case where a party has assigned to the state rights to child support because of the receipt of public assistance as defined in section 256.741 or has applied for child support services under title IV-D of the Social Security Act, United States Code, title 42, section 654(4).

Appendix G

42 U.S.C., Ch. 21, Subch. I, § 1983 (2005)

42 U.S.C., Ch. 21, Subch. I (2005)

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.